CIMB Trustee Bhd v Pentadbir Tanah Daerah Seberang Utara Pulau Pinang

HIGH COURT (PULAU PINANG) — LAND ACQUISITION NO 15–18 OF 2011
VARGHESE GEORGE J
20 SEPTEMBER 2012

Land Law — Acquisition of land — Compensation — Award — Acquisition of part of land — Appeal — Whether compensation awarded adequate — Burden to show cogent and acceptable reasons why award inadequate — Land Acquisition Act 1960

The present land reference stemmed from an objection filed by the applicant ('the registered landowner') against an award of compensation made by the respondent in respect of a acquisition of a part of the land ('Lot 3009') under the Land Acquisition Act 1960 ('the Act') for the purpose of 'Projek Landasan Keretapi Berkembar Ipoh-Padang Besar (Lot Tambahan) bagi laluan Talian TNB dan Switching, Tasek Gelugor'. The applicant's objection was only in respect of the adequacy of the compensation awarded. There were other acquisitions at the same time from adjoining titled lots which also belonged to the same applicant for the same project and similar objections to the award of compensation with reference to those lots formed the subject matter of separate land reference proceedings, namely Lot 449, Lot 1844, Lot 5685. Lot 3009 and the other three pieces of land, all of which were held under separate titles, were however physically contiguous to each other and formed part of a large plantation-holding ('Malakoff Estate'). At the end of the land reference proceedings, the assessors were unanimous that there should be an increase in compensation and hence, the present appeal.

Held, allowing the application:

(1) It is trite that in proceedings of this nature, the burden was on the applicant, more particularly on the applicant's private valuer by means of his valuation report(s) and rebuttal (reply) report, to show cogent and acceptable reasons why the award of the respondent, sought to be impugned, was inadequate. It was not sufficient for the applicant to merely state that a railway line separated Lot 3018 and Lot 1298 and deem them 'contiguous'. For purposes of the applicability of s 214A of the Act constraint, namely as an 'estate land', it was incumbent upon the applicant to establish on evidence also that the total acreage of the land comprised in Lots 3018, 1298, 2994 and 2991 was in excess of 40 ha. There was no such evidence led before the court in respect of the latter requirement that had to be also satisfied (see paras 6 & 22).

(2) If the awards of compensation for the 2008—acquisitions involving Lots 3018 and 1298 were on the basis that they were 'estate land', then the applicant ought to have in their possession such relevant documents, including the valuation report that would show that the applicant's claim there was premised on that basis and/or the compensation sum awarded was on that basis. There was no evidence either of such nature, forthcoming from the applicant (see para 22).

(3) In any case, it was also trite that for an award of compensation to be relied upon as a guide to deduce market value of a given land, it had to be an award of compensation made or obtained in a previous acquisition from the same land. That was not the case here as there was no prior acquisition involving land in Lot 3009 (see para 25).

[Bahasa Malaysia summary

Rujukan tanah ini berasal daripada bantahan yang difailkan oleh pemohon ('pemilik tanah berdaftar') terhadap award pampasan yang dibuat oleh responden berkaitan pengambilan sebahagian tanah ('Lot 3009') di bawah Akta Pengambilan Tanah 1960 ('Akta') bagi tujuan 'Projek Landasan Keretapi Berkembar Ipoh-Padang Besar (Lot Tambahan) bagi laluan Talian TNB dan Switching, Tasek Gelugor'. Bantahan pemohon hanya berkaitan kecukupan pampasan yang diawardkan. Terdapat pengambilan tanah lain pada masa yang sama daripada tanah lot-lot berhakmilik bersebelahan yang mana juga dimiliki oleh pemohon yang sama untuk projek yang sama dan bantahan yang sama kepada award pampasan dengan rujukan kepada lot-lot tersebut membentuk perkara prosiding rujukan tanah berasingan, iaitu Lot 449, Lot 1844, Lot 5685. Lot 3009 dan tiga bidang tanah, yang mana kesemuanya terletak di bawah hak milik berasingan, walau bagaimanapun memang bersempadan antara satu sama lain dan membentuk sebahagian pemegangan ladang yang besar ('Malakoff Estate'). Di akhir prosiding rujukan tanah, penilai-penilai bersetuju bahawa patut terdapat penambahan dalam pampasan dan maka rayuan ini.

Diputuskan, membenarkan permohonan:

(1) Adalah nyata bahawa dalam prosiding bersifat sebegini, beban adalah ke atas pemohon, terutama ke atas penilai persendirian pemohon dengan cara laporan-laporan penilaiannya dan laporan pematahannya (jawapan), untuk menunjukkan alasan-alasan meyakinkan dan boleh diterima mengapa award responden, yang dipohon untuk dipersoalkan, tidak mencukupi. Ia tidak mencukupi semata-mata untuk perayu menyatakan bahawa landasan keretapi yang mengasingkan Lot 3018 dan Lot 1298 dan menggangap ianya 'contiguous'. Untuk tujuan penggunaan s 214A Akta menghadkan, terutamanya sebagai 'estate land', adalah wajib ke atas pemohon untuk membuktikan atas keterangan juga bahawa keseluruhan keluasan ekar tanah yang terdapat

di dalam Lot-Lot 3018, 1298, 2994 dan 2991 adalah berlebihan sebanyak 40 ha. Tidak terdapat keterangan yang dikemukakan di hadapan mahkamah berkaitan keperluan pemohon yang juga mesti dipenuhi (lihat perenggan 6 & 22).

(2) Jika award pampasan untuk pengambilan tanah 2008 melibatkan Lot-Lot 3018 dan 1298 adalah atas dasar bahawa ia adalah 'estate land', oleh itu pemohon patut mempunyai dokumen relevan sedemikian dalam simpanan mereka, termasuk laporan penilaian yang akan menunjukkan bahawa tuntutan pemohon tersebut adalah bersandarkan dasar tersebut dan/atau jumlah pampasan yang diawardkan adalah atas asas tersebut. Tiada keterangan mengenai salah satu sifat sedemikian, yang berbangkit daripada pemohon (lihat perenggan 22).

(3) Walau bagaimanapun, ia juga nyata bahawa untuk award pampasan digunakan sebagai panduan untuk menyimpulkan nilai pasaran sesuatu tanah, ia mesti award pampasan yang dibuat atau diperolehi dalam pengambilan tanah terdahulu daripada tanah yang sama. Ini bukan kes di sini memandangkan tiada pengambilan tanah terdahulu yang melibatkan tanah Lot 3009 (lihat perenggan 25).]

Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th E, 2013 Reissue) paras 2194–2241.

Cases referred to

Nanyang Manufacturing Co v The Collector of Land Revenue, Johore [1954] 1 MLJ 69 (refd)

Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35, FC (refd)

Ong Yan & Anor v Collector of Land Revenue, Alor Gajah, Malacca [1986] 1 MLJ 405 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 40D(3), 49(1), 214A

National Land Code ss 214A, 214A(1), (10A)(a), (b), (11), (12)

Aisya Abdul Rahman (Fahri Azzat with her) for the applicant.
Ooi Chooi Gaik (State Legal Advisor, Legal Advisor Office) for the respondent.

Varghese George J:

[1] This land reference arose from an objection filed by the applicant ('the registered landowner') against an award of compensation made by the respondent in respect an acquisition of a part of the land known as Lot 3009 held under GRN 40034, Mukim 12, Daerah Seberang Perai Utara, Negeri

Pulau Pinang ('Lot 3009') under the Land Acquisition Act 1960 ('the Act'). The purpose for the acquisition was stated to be 'Projek Landasan Keretapi Berkembar Ipoh-Padang Besar (Lot Tambahan) bagi laluan Talian TNB dan Switching, Tasek Gelugor'.

The applicant's objection was only in respect of the adequacy of the compensation awarded (see *Borang* N).

[2] There were other acquisitions at the same time from adjoining titled lots which also belonged to the same applicant for the same project. Similar objections to the award of compensation with reference to those lots formed the subject matter of separate land reference proceedings, namely:

(a) Land Reference No 15–16–2011 (Lot 449);

(b) Land Reference No 15–17–2011 (Lot 1844); and

(c) Land Reference No 15–19–2011 (Lot 5685)

Lot 3009 and the other three pieces of land stated above, all of which were held under separate titles, were however physically contiguous to each other and formed part of a large plantation-holding, known as Malakoff Estate.

[3] The salient details of Lot 3009 and the subject acquisition from Lot 3009, to which the parties were on common grounds, were as follows:

(a) material date:
21 July 2011;

(b) overall size of Lot 3009:
34.75 acres. (140,628.246 sm/14.062 ha);

(c) area of land acquired from Lot 3009:
10.2860acres/448,058.1014.sft
(41,626sm/4.1626 ha);

(d) tenure of land:
freehold/title in perpetuity (non-first grade);

(e) the applicant's claim were for:

(i) market value of land acquired at the rate of RM13 per sqft; and

(ii) damages for:
severance/injurious affection;

(f) the respondent's award were as follows:

(i) market value of land acquired at the rate of RM4.65 per sqft; and

(ii) injurious affection/other damages — RM50,000;

(g) valuation by JPPH (government valuer) were as follows:

(i) market value of land acquired at the rate of RM4.65 per sqft; and

(ii) in respect of 'severed portion' (Portion A), it was recommended that the area be also acquired;

(h) size of severed area (Portion A):
2.45 acres /103,161.22sft (0.9 ha).

[4] The land reference proceedings were conducted over two sittings on 29 March 2012 and 2 May 2012 with the assistance of the following assessors:

(a) Tuan Nik Helmi bin Nik Mansor (from the government list); and

(b) Dr Jason Teoh Poh Huat (from the private valuers' list).

In the result, after having considered all evidence and submissions, and having given due regard to all relevant considerations, the assessors were unanimous that there should be an increase in compensation ordered in this case in the following terms:

1.	Market value at rate of RM5 per sqft x 448,058.1014 sqft less award/ *Borang* G	 - 2,240,290 - 2,081,300 + 158,990
2.	Injurious affection RM5 x 106,632 sqft x 10% less sum awarded	 - 53,316 - 50,000 + 3,316

Total increase in compensation: RM162,306.

I concurred with both the assessors in the above enhanced compensation ordered in favour of the applicant.

[5] The applicant has now however lodged an appeal against the aforesaid order of increased compensation.

It is pertinent, at the outset, to point out that s 40D(3) of the Act (Decision of Court on Compensation), (reproduced below), in effect ousted the right of any appeal against the decision of the land reference court, if the decision was on the issue of 'compensation' awarded.

> (3) Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

This position in law that the decision of the land reference court on

compensation was final and not appealable, was also repeated and captured in s 49(1) of the Act, which read as follows:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to s.3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

There therefore definitely arose a preliminary issue as to whether an appeal, as is brought now by the applicant, against the decision of the court on compensation, is justiciable or a competent one at that, at all.

Be that as it may, the grounds for the decision reached by the court are nevertheless as set out hereinafter.

MARKET VALUE OF LAND

[6] It is trite that in proceedings of this nature, the burden was on the applicant, more particularly on the applicant's private valuer by means of his valuation report(s) and rebuttal (reply) report, to show cogent and acceptable reasons why the award of the respondent, sought to be impugned, was inadequate. (*Ong Yan & Anor v Collector of Land Revenue, Alor Gajah, Malacca* [1986] 1 MLJ 405).

For an assessment of the market value of land that was subject to an acquisition, the use of the 'comparison method' of valuation was the preferred basis as restated in para 1 (Market Value) of the First Schedule of the Act, (Principles Relating To The Determination of Compensation The two important 'measures' that had to be given due regard to were available evidences of consideration or the price paid in transactions (referred commonly as 'comparables') between a willing seller/willing purchaser of land:

(a) with similar characteristics; and

(b) situated within the vicinity of the subject acquired land.

[7] In the oft-quoted judgment of Buhagiar J in *Nanyang Manufacturing Co v The Collector of Land Revenue Johore* [1954] 1 MLJ 69, the aforesaid criteria was amplified in the following words:

> The safest guide is evidence of sales of similar land of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables subject to making allowance for all circumstances.

Similarly in the case of *Ng Tiou Hong v Collector of Land Revenue Gombak* [1984] 2 MLJ 35, it was pointedly stated:

… Secondly, the market price can be measured by a consideration of the prices of sale of similar land in the neighborhood or locality and of similar quality and positions.

Thirdly, its potentialities must be taken into account.

[8] It was not in dispute that Lot 3009 formed part of a large agriculture plantation tract, comprising of various titled lots which in the aggregate by way of land area exceeded 40 ha. Most of that titled lots were physically 'contiguous' to each other and in fact Lot 3009 (14,0628ha) shared an immediate common boundary with Lot 5685 (255.0 ha).

It was also not disputed that Lot 3009, together with the other titled lots of land which were contiguous to each other and cumulatively in total area exceeded 40 ha, were caught within the definition of 'estate land' as spelt out by s 214A of the National Land Code ('NLC'). The approval of the estate land board ('ELB') had to be obtained for any intended disposal of any one or part of any of the separately titled lots of land which were contiguous to each other. Accordingly Lot 3009, together with those contiguous lots was subject to this legal constraint, in so far as its marketability was concerned.

[9] The relevant provisions of s 214A of the National Land Code 1965 (NLC), which were relevant in this regard, namely sub-ss (1), (10A)(a)–(b), and (11)–(12) are set out hereunder:

(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as 'the Board') established under subsection (3).

…

…

(10A)

(a) Any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in contravention of subsection (1), shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to a fine not exceeding ten thousand ringgit.

(b) For the purposes of this section, the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land to one or more persons, without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of subsection (1); and any act to demarcate an estate land or to cause or permit the demarcation of an estate land otherwise than in accordance with the provisions of this Act shall be prima facie proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of subsection (1).

(11) For the purpose of this Act 'estate land' means any agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the alienated lands constituting such area are contiguous.

(12) For the purpose of this Act, alienated lands held under final title or qualified title or a combination thereof, shall be taken to be contiguous notwithstanding that they are separated from each other only by such land as is used, required or reserved for roads, railways or waterways.

[10] It followed therefore that any consideration paid in a sale transaction (or even an award in an acquisition of another land in the vicinity of Lot 3009) to be reliably used as a 'comparable' to deduce market value of Lot 3009 on the material date, had to be of an 'estate land', that is, with similar characteristic and subject also to the legal limitation imposed by s 214A as well.

PRIVATE VALUER'S CASE

[11] The private valuer for the applicant in support of his pitch that the market value of Lot 3009 at the material date should be RM13 per sqft, cited evidences of the consideration paid in three sale transactions (Lot 3436, Lot 2001, and Lot 841) and of two awards of compensation obtained in respect of two 2008-acquisition cases (involving Lots 1298, 3018).

The relative location of the aforesaid evidences sought to be relied upon in relation to Lot 3009 (the subjevt of this proceedings) was available in the 'common plan of comparables' (marked 'CP').

[12] As regards the sale transactions, it was conceded by the private valuer that the pieces of lands in question were not 'estate land'. The details as to their respective land areas was set out in the Table at p 8 of the private valuer's report (namely, 3.961 ha, 26.01 ha and 2.011 ha, respectively). They were individual and separate titled lots and were transacted accordingly.

The private valuer submitted that, amongst the three sale transactions the first comparable (Lot 3436) was the best indicator of market value for purposes of deducing the market value of Lot 3009. However, it was noted that Lot 3436, was only 3,961 ha in size. It was transacted on 11 March 2011 at a consideration which worked out to RM15.14 per sqft. It was the private valuer's contention and opinion that, subject to adjustments and/or deduction for dissimilarities, the reasonable market value of Lot 3009 should be held to be at the rate of RM13 per sqft.

[13] The two acquisition awards that were also referred to by the private valuer in support of this claim for an increased award at the rate of RM13 per sqft arose from acquisitions both on 31 July 2009 involving Lot 1298 and Lot 3018. The thrust of the private valuers argument here was that Lot 1298 and

Lot 3018 formed part of the same plantation (Malakoff Estate), albeit, located in a different 'division', (as large plantations are divided for administrative and management purposes). This, it was further contended, offered the most credible basis from which the market value at the material date (21 July 2011) for Lot 3009 could be best deduced, subject to adjustment for 'time' (two years hence) in particular.

The awarded compensation for market value of land made in the 2008 acquisitions on a per sqft basis (for 0.6936 ha acquired) from Lot 1298 was RM10 per sqft and (for 4.7892 ha acquired) from Lot 3018 at RM12 per sqft.

[14] At this point when the private valuer placed emphasis on the said acquisition awards as good indicator of value in the locality for plantation land, the assessors and I raised the issue of whether Lot 1298 and Lot 3018 were physically contiguous to the other lands belonging to the applicant to constitute a holding of agricultural land exceeding 40 ha in area. In other words, the issue boiled down to this — whether Lot 1298 and Lot 3018 were similarly 'estate land' within the definition of 'estate land' in s 214A of the NLC, as was the situation of Lot 3009.

The proceedings were then adjourned to enable respective valuers for both parties an opportunity to provide further clarity by way of further maps and evidence as to this specific identified issue.

[15] Upon resumption, the applicant's valuer tendered PV3 with an enlarged 'Malakoff Estate Plan' as an appendix. The government valuer also submitted a 'Plan' which was marked GV3, showing the relative position of Lot 1298 and Lot 3018 to the other lots owned by the applicant, including Lot 3009.

[16] It was this court's conclusion, after examining the detailed map and plans submitted that, Lot 1298 and Lot 3018 were not 'estate land' as defined on s 214A(11)–(12) and constituted pieces of land that could be freely transacted without having to comply with the legal requirements of s 214A. In other words, Lot 1298 and Lot 3018 would naturally therefore command a higher value in the market (in comparison to land which were comprised in 'estate land'), that is notwithstanding the fact that Lot 1298 and Lot 3018 were part of the same plantation, Malakoff Estate.

There was clearly discernible from the map/plan before us that there were intervening titled lots of land not owned by the applicant, that separated Lot 3018, from the other land that formed the bulk of 'Mayfield Division' of Malakoff Estate or for that matter, Lot 1298 and Lot 3018 together, from the Home Division of Malakoff Estate (see plan appendix in PV3).

[17] A reading of sub-ss (11)– (12) of s 214A together could only mean that

the 'contiguity' that was being intended to be caught by those provisions was 'physical contiguity' of the land and not 'administrative contiguity'.

The language of sub-s (12) of s 214A of the NLC which deemed that pieces of land (belonging to the same owner) but separated only by 'such land used required or reserved for roads, railways or waterways' would still be considered as contiguous for purposes of that provision, underlined the sting of the statutory restriction imposed being dependent on the physical connection existing between the pieces of lands in question.

[18] It followed therefore that Lot 1298 and/or Lot 3018 would not be 'estate land' unless they were physically contiguous to one or more of the other land which belonged to the applicant, and most significantly, the total land area amongst those physically interlinked pieces of land was 40 ha or more.

It did not accordingly matter that Lot 1298 and Lot 3018 were being managed as part of the one same plantation entity, namely Malakoff Estate. For purposes of s 214A of the NLC, Lot 1298 and/or Lot 3018 could be 'non-estate land' if there was no such contiguity with the other of the lots in the first place. Even if they were contiguous to each other or other lots they had to still be in excess of 40 ha in total land area to be caught by that provision.

[19] By reference to the enlarged 'Malakoff Estate Plan' in PV3, and the plan in GV3, the nearest titled lot to even Lot 2991 (cited to belong to same applicant and contiguous to Lot 3018) was Lot 2984. (Lot 2984 itself in relation to Lot 5685 did not have any stretch of common boundary but only had a 'common point' were the edges of the two titled lots coincided.

However what was obvious (also with reference to *lampiran* D of GV1) was that Lot 2984 was separated from Lot 2991 and Lot 3018 (taken together) by other intervening individually titled lots of land, which were obviously owned by others.

[20] It was true that Lot 2991 (and Lot 3018) was on the west side of the road from Simpang Village to Padang Serai but Lot 2984 which was on the east side of the same road was not immediately opposite the road that separated them. There were, as highlighted above, other intervening titled lots. In other words the boundaries of Lot 2984 and Lot 2991 (and by extention Lot 3018) was not separated only by the aforesaid road; there were other titled lots of land as between Lot 2984 and Lot 2991.

[21] However with respect to Lot 1298 and Lot 3018, these two lots had common boundaries separated only by land used as railway line. Those two lots were 'contiguous' under the meaning of s 214A(12) of the NLC. A reference to this was made by applicant's counsel in the further submission tendered.

However there was no evidence led by the applicant to show that the combined

land area of Lot 1298, Lot 3018, Lot 2994 and Lot 2991 (all stated to be owned by the applicant but located separately from the other lots in the Home Division or Mayfield Division) exceeded 40 ha to constitute those titled lots as 'estate land'.

That was not at all the basis of the evidence or submissions of the applicant before us. Neither did the private valuer in his various reports tendered, namely PV1, PV2 or PV3, advert to such a situation. The applicant's contention was limited to the assertion that Lot 3018 and Lot 1298 were 'contiguous' to the other lots lands which composed the 'Home Division' of Malakoff Estate.

[22] It was not sufficient for the applicant to merely state that a railway line separated Lot 3018 and Lot 1298 and they were deemed 'contiguous'. For purposes of the applicability of s 214A constraint, namely as an 'estate land, it was incumbent upon the applicant to establish on evidence also that the total acreage of the land comprised in Lots 3018.1298, 2994 and 2991 was in excess of 40 ha. There was no such evidence led before the court in respect of the latter requirement that had to be also satisfied.

It must be emphasised here that if the awards of compensation for the 2008-acauisitions involving Lots 3018 and 1298 were on the basis that they were 'estate land', then the applicant ought to have in their possession such relevant documents, including the valuation report that would show that the applicant's claim there was premised on that basis and/or the compensation sum awarded was on that basis. There was no evidence either of such nature, forthcoming from the applicant.

[23] It must be noted that the failure of the applicant to establish that the combined area of Lots 3018,1298 and Lots 2991, 2994 was in excess of 40ha, was notwithstanding the further opportunity and adjournment of the hearing granted by the court to clarify that position that they were also 'estate land' for purposes of s 214A(11)–(12), if that was indeed the case. The applicant had only attempted to link Lot 3018 and Lot 1298 to the Home Division.

[24] In the result, the assessors and I were not convinced that the awards made in respect of the 2008-acquisitions involving Lot 3018 and Lot 1298 were on the basis that those two lots were 'estate land'. The rate of 'market value' award in those cases, in all probability, was on the basis that they were independently titled lots of land detached from the other lands which formed Malakoff Estate. The acquisition awards obtained by the applicant in 2008 in respect of Lot 3018 and Lot 1298 were not in respect of land with 'similar characteristics' in particular, subject to similar legal constraints like that Lot 3009 was subject to. The said awards were therefore also (like the evidences of sales cited by the applicant's valuer) not reliable comparables to be used to deduce the market value of Lot 3009 in respect of this 2011 acquisition.

[25] In any case, it was also trite that for an award of compensation to be relied upon as a guide to deduce market value of a given land, it had to be an award of compensation made or obtained in a previous acquisition form the same land. That was not the case here as there was no prior acquisition involving land in Lot 3009.

[26] The only 'comparable' which involved a transaction of an 'estate land' (more than 100 acres or 40 ha) was the Government Valuer's Comparable No 1 which was analysed by the government valuer to be RM40 psm or RM3.72 per sqft (transacted in August 2010) (see *lampiran* 1; GV1). The government valuer had also referred to five other transactions involving large parcels of land (four of which were planted with oil palm) but these five transacted lands were not caught by the constraints of s 214A of the NLC.

The government valuer, relying on that one comparable estate land evidence of sale, had recommended a market value rate of RM50 p.sm or RM4.65 per sqft for Lot 3009.

It must be stressed here that the government valuer in GV1 had (at item 13.0 (vi) — p 10) stated expressly that Lot 3009 (and Lot 3685) were subject to s 214A of the NLC constraints and this was reiterated in her testimony before us.

[27] The assessors were of the view that in any event, the other 'comparables' of the private valuer (except the Lot 3018 and Lot 1298-awards) and all the comparables of the government valuer were not in the immediate proximity of Lot 3009. (The comparables referred by the government valuer was about 25km away).

It was the assessors' opinion in the circumstances that since Lot 3009 was a freehold piece of land and located in an area where there was evidence of development and demand for land, there ought to be an upward adjustment for these factors to the recommendation of the government valuer. Accordingly it was ruled that a fair and reasonable rate of market value for Lot 3009 at the material date should be RM5 per sqft.

SEVERANCE

[28] The applicant's valuer had made a claim for injurious affection and severance. The private valuer however conceded that the claim (insofar as Lot 3009 was concerned) was essentially for diminution in value of Portion A severed from the remainder of unacquired land within Lot 3009.

The area of land affected in Portion A was not in dispute and it was also conceded by the applicant's valuer that considering that Portion A would still retain its road frontage (despite being severed from the rest of Lot 3009), the diminution in value to that area would be essentially that caused by its resultant

irregular shape and in this respects he agreed that the 'diminution in value' would be about 10% depreciation to the assessed market value for Lot 3009.

CONCLUSION

[29] For the reasons discussed and elaborated above, the award of compensation made by the respondent was enhanced by a sum of RM162,306 as set out above.

It was also ordered that late payment charges at 8%pa on the said increase of compensation be paid by the respondent from 9 November 2011 (date of *Borang* K) until full settlement.

Application allowed.

Reported by Afiq Mohamad Noor